



WEST VIRGINIA DEVELOPMENT OFFICE

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CE 2017-03

June 9, 2017

Received
JUN 09 2017
WV Ethics Commission

Rebecca L. Stepto
Executive Director
West Virginia Ethics Commission
210 Brooks Street, Suite 300
Charleston, WV 25301

RE: Request for Exemption of a Public Contract on behalf of the West Virginia Development Office.

Dear Ms. Stepto:

Please accept this letter as a formal request on behalf of the West Virginia Development Office (WVDO) for an exemption from the prohibition against interests in public contracts pursuant to West Virginia Code § 6B-2-5(d)(4). Although the WVDO believes that there is no conflict with the West Virginia Ethics Act (the “Act”) because no elected public official or member of their immediate family has an interest in the profits of a public contract, nor benefits from the activities described herein, the WVDO seeks this exemption to alleviate even the indicia of impropriety. The WVDO respectfully submits that failure to provide the exemption would cause undue hardship, excessive cost, and/or substantially interfere with the operation of the agency and that the exemption is imperative to the success of the agency’s ability to attract economic opportunity to our state.

BACKGROUND

The WVDO began participating in the Greenbrier Classic in 2011 to promote the State of West Virginia to potential private economic partners. The Professional Golf Association (PGA), which is a world class organization, already had a presence in the state through the Greenbrier Classic golf tournament. The Greenbrier Classic is conducted by Old White Charities, Inc., a (501)(c)(3) non-profit corporation.¹ At that time, Governor Earl Ray Tomblin envisioned the direct benefit of aligning the State of West Virginia with that endeavor and chose the WVDO to carry out the mission of using the tournament as a business recruitment tool.

The WVDO initially focused solely on recruiting “game changer” business clients and building substantive connections between high-level executives, site selectors, existing industry leaders and state officials. The WVDO has benefited from the exclusivity of the venue and used the tournament as an effective tool to highlight the best of West Virginia. Although the WVDO’s initial effort for the 2011 event was business recruitment, in the following years, the model evolved to expose new people to the benefits of living, working, and playing in West Virginia. In the following year, the Legislature recognized the value of the tournament for business recruitment and promoting the tourism industry in the State and appropriated funds accordingly.

¹ Old White Charities, Inc. is a Section 501(C)(3) non-profit corporation whose directors are the children of the current Governor. However, see attached correspondence which indicates that the Governor nor any member of the Governor’s family receives any compensation or payment of any kind from Old White Charities, Inc.

In the years to follow², the WVDO's planning became more refined and connected with the tournament. For example, the tournament constructed a formal welcome center focused entirely on tourism at no extra cost to the state that was manned by the West Virginia Division of Tourism. The staff also helped ensure that everyone attending the tournament had first-hand understanding of the opportunities, features, and benefits of West Virginia. The ability of the state to work closely with the event was one of the primary factors the PGA used to select West Virginia in the first place.

The WVDO's efforts have succeeded beyond expectations. The WVDO has hosted dozens of CEO's and other decision makers who influence location decisions for major investments at the Greenbrier Classic, including major companies in the consumer goods, chemicals, petrochemicals, automotive, hardwoods, e-commerce, and energy industries to expand business opportunities in West Virginia. The WVDO has not only connected state officials with decision makers, but has also shared the experience with many great philanthropic organizations like Big Brothers, Big Sisters, the Boy Scouts, and the Children's Home Society. The WVDO routinely invites dozens of West Virginia professionals to network at our events, creating opportunities to cross promote the state's business community and identify new investment channels.

These efforts have translated into tangible benefits for West Virginia. For example, relationships cultivated during the Greenbrier Classic connected the WVDO with a Fortune 100 company, which is anticipated to employ between 800-1000 employees. All in all, the WVDO can attribute more than \$1 billion in investment and thousands of jobs to relationships developed at the tournament. Indeed, the agency believes there is a direct connection between almost every major announcement (and even smaller projects) and the relationships that were either started at or built upon at the Greenbrier Classic.

In summation, the Greenbrier Classic is a world-class event sought after by industry professionals across the country and it represents the state's greatest business development tool. This will be WVDO's sixth year participating in the tournament and the WVDO has adjusted the model back to strictly business development and recruitment. It has already started outreach activities. There is no legislative appropriation dedicated for the event in this year's budget.

STATUTORY AUTHORITY

The WVDO was statutorily created to foster economic development on behalf of the state of West Virginia. Its primary responsibility is to furnish assistance to new or existing businesses. In providing this assistance, any documents, materials, data, or other writings are confidential and specifically exempt from public disclosure under the West Virginia Freedom of Information Act. The agency receives special revenue funds derived from excess lottery revenue proceeds to promote the state and attract potential businesses to West Virginia. The WVDO is authorized to enter agreements or joint ventures with non-profit organizations to further its mission. The relevant provisions of the West Virginia Code are set forth as follows:

§5B-2-1. West Virginia development office; confidentiality.

....

[A]ny documentary material, data or other writing made or received by the West Virginia development office . . . for the purpose of furnishing assistance to a new or existing business shall be exempt from the provisions of article one, chapter twenty-nine-b of this code: Provided, That any agreement entered into or signed by the development offices . . . which obligates public funds shall be subject to inspection and copying pursuant to the provision of said article as of the date the agreement is entered into, signed or otherwise made public.

² Last year the state did not participate in the Greenbrier Classic due to the devastating floods.

§5B-2-3. Powers and duties of the executive director. The executive director shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia.

§5B-2-3b. Development office promotion fund. There is hereby established in the state treasury a special revenue fund known as the "development office promotion fund." Moneys deposited in this fund shall be administered by the development office and used solely to promote business formation, expansion, recruitment and retention through aggressive marketing and international development and export assistance, which together lead to more and better jobs with higher wages for all geographic regions and communities of the state, including rural areas and urban core areas, and for all residents, including minorities.

§5B-2-4. Public-private partnerships. The West Virginia Development Office is authorized to enter into contractual or joint venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to 501(c) of the Internal Revenue Code and for purposes of the economic development of West Virginia, and funded from sources other than the state.

From time to time the executive director may enter into joint ventures wherein the West Virginia Development Office and the nonprofit corporation share in the development and funding of economic development programs.

All expenses associated with the WVDO's recruitment efforts will be paid from the Development Office promotion fund. Although all state funds are the "public's money," the legislature specifically intended and authorized expenditures of this nature recognizing the inherent positive economic impact on our State. Furthermore, W. Va. Code § 5B-2-4 provides that the Executive Director of the Development Office "[m]ay enter into joint ventures wherein the West Virginia Development Office and the nonprofit corporation share in the development and funding of economic development programs." WVDO submits that continued payments to Old White Charities, as a 501(C)(3) nonprofit corporation, is consistent with this statutory power.

The WVDO believes that it is important to note that its relationship with Old White Charities is ongoing relationship, established by the prior administration. The WVDO has also not received any request or direction from the current administration to initiate any efforts seeking this exemption. In fact, planning for much of this event, and actions taken to be involved with the Greenbrier Classic, occurred prior to the change in administration.

BASIS FOR THE EXEMPTION

The WVDO asserts that in the event the Commission determines there is a conflict with the Act, the agency is entitled to an exemption from the prohibitions set forth in West Virginia Code § 6B-2-5(d)(1) and (2) due to excessive cost, undue hardship, and/or substantial interference with the operation of a government agency for the following reasons:

1. Excessive cost:

- The WVDO has approximately 20-30 targeted clients committed to attend the Greenbrier Classic this year, including CEOs, high-level executives, national site-selection consultants, and industry leaders. Over 100 invitations have been extended and the WVDO anticipates more commitments are forthcoming.
- As part of the recruitment package, the WVDO has pledged to reimburse reasonable and necessary travel-related expenses for the principle target clients.

- As part of client services, the WVDO has agreements in place to enhance client experience, including food and beverage, entertainment, and meeting space.
- Venue tickets have gone to print that include the West Virginia Department of Commerce logo.
- The WVDO targets site location consultants during the Greenbrier Classic. These consultants are hired by major companies to evaluate potential sites in a geographic region and assess what makes the most business sense for their clients. They act as a proxy between the company they represent (which remains confidential) and the states where potential development sites are located. Site consultants typically work on multiple projects for multiple companies at any given time. Companies rely heavily on data from their consultants to make decisions about where to place its operations and capital. Face-to-face meetings with state officials help consultants strengthen lines of communication and information packages. This arrangement allows for significant economies of scale. By bringing these consultants to a centralized location at a captive, world-class event, the agency saves substantial money because the WVDO would otherwise need to develop these relationships in disparate meetings and in multiple locations across the country.

2. Undue hardship:

- Important decision makers have made West Virginia a priority on their busy agendas by committing to attend the Greenbrier Classic. To cancel arrangements at this point would cause severe damage to the reputation of the WVDO, diminishing our competitive position with other states.
- Using a major spectator attraction as an economic development tool is a common business development tactic employed by other states. For example, economic development officials in Kentucky use the Kentucky Derby as a tool to help lure investors to their state. The Greenbrier Classic is West Virginia's only opportunity to compete on a national level with other states for these investments.
- The WVDO has organized this event over multiple years and it continues to grow. The WVDO's clients look forward to this event. Top executives reflect positively on the State of West Virginia because of this event. This positive sentiment reinforces their connection to the state and affects how they communicate with their clients, investors, and employees, both now and in the future.
- Withdrawal from the tournament at this juncture will detrimentally affect the state's economic development efforts and result in wasted time and resources. Preparation activities occur throughout the year.
- More than 20 Japanese companies have facilities in West Virginia and the WVDO has invited representatives from our major Japanese manufacturers to attend the event.
- The exclusivity of the event is unique. The tournament represents the only professional sports spectator event in the state. If the WVDO cannot participate in this event, it cannot replicate its intrinsic value at another time or place. West Virginia would therefore forgo its only opportunity to showcase the state on this scale, and be prevented from bringing companies and consultants into an exclusive, West Virginia setting.

3. Substantial interference with operation the governmental agency:

- The Greenbrier Classic is one of the WVDO's busiest and most critical weeks of the year. Business people, site consultants, and project managers from all over the world come to the Greenbrier Classic each year as guests of the state to meet with state officials about potential business development in the state.
- The Greenbrier Classic is part of a multi-pronged approach the WVDO utilizes to recruit business clients to West Virginia. A company's decision to make a major capital investment is not taken lightly and can take years to cultivate. The Greenbrier Classic is a very effective tool in showcasing the state and building relationships. Deals are not often struck at the event, but the tournament gives state officials the opportunity to build relationships with companies and consultants who represent them to show off what the state can offer.
- The potential opportunities which may be lost are impossible to quantify because investment decisions are not culminated during the tournament.

CONCLUSION

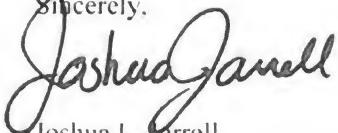
The WVDO has requested that the tournament be mindful of the current budget conditions this year, and work with the WVDO to make sure that its presence is appropriate and targeted to recruitment. The WVDO logo will not be on any leader boards or be visible throughout the course; it will be restricted to identification purposes only on venue signage. The WVDO will reduce costs by returning to a one-venue operation.

It is crucial that the state of West Virginia continue to support the PGA and its desire to remain in our state because the tournament itself is a major economic drive. West Virginia has been a key stakeholder in the conversation for the past seven years and the WVDO needs to maintain this relationship well into the future. Furthermore, West Virginia has become a model to other states on how to combine an opportunity such as a PGA tournament with recruitment efforts.

In coordinating arrangements for specific clients, we have already started the process of organizing the event and setting crucial meetings, which cannot be identified due to the confidentiality provisions of W. Va. Code §5B-2-1. Travel plans and logistics have been set and efforts are in motion to ensure proper coordination. To cancel these efforts now would severely damage the WVDO's ability to recruit and expand business opportunities in West Virginia. Halting or reversing our course of action would be detrimental to an extent we may not be able to repair.

The WVDO understands the constraints of the West Virginia Ethics Act and intends to act within the letter and spirit of the law while at the same time ensuring that this important tool remains viable for the benefit of our state. As time is of the essence, the WVDO respectfully requests that this matter be considered by the Commission at the very earliest opportunity because of the fast-approaching date of the event. Your attention and efforts are greatly appreciated.

Sincerely,



Joshua L. Jarrell

Deputy Secretary/General Counsel

West Virginia Economic Development Office
Greenway Building
Northgate Business Park
180 Association Drive
Charleston, WV 25311-1217

To Whom It May Concern:

Old White Charities, Inc. is a non-profit organization. The organization currently holds a 501(c)(3) status.

The current officers listed with the WV Secretary of State Office are:

Director: James C. Justice III
Director: Jillean L. Justice
President: James C. Justice III
Secretary: James T. Miller
Treasurer: James T. Miller

No part of this organization's income is distributed to its members, directors, or officers.

Sincerely,



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Old White Charities
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